

1 **WO**

2
3
4
5
6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Sharon Hodges; and Frank Hodges,

10 Plaintiffs,

11 vs.

12 Barak Obama, President of the United
13 States; and John Boehner, Speaker of the
House, United States Congress,

14 Defendants.
15

No. CV-11-693-PHX-JAT

ORDER

16 Plaintiffs have filed a pro se complaint against President Barack Obama and
17 Speaker of the House John Boehner. The complaint purports to assert a negligence claim
18 and a violation of executive privilege, and seeks an emergency restraining order
19 prohibiting a shutdown of the federal government. Doc. 1. The case has been assigned
20 to Judge James Teilborg, but he is not available to hear the request for emergency relief.
21 The undersigned Judge has been randomly selected to consider Plaintiffs' request. For
22 reasons stated below, the Court will deny Plaintiffs' request for an emergency restraining
23 order.

24 To obtain an emergency restraining order, a plaintiff must show that he is likely
25 to succeed on the merits, that he is likely to suffer irreparable harm in the absence
26 of preliminary relief, that the balance of equities tips in his favor, and that an injunction
27 is in the public interest. *Winter v. Natural Res. Def. Council*, 555 U.S. 7, 129 S. Ct. 365,
28

1 374 (2008). The test includes a sliding scale. If the plaintiff shows that the balance of
2 hardships will tip sharply in his favor, he need not make as strong a showing of the
3 likelihood of success on the merits – the existence of serious questions will suffice.
4 *Alliance for Wild Rockies v. Cottrell*, 622 F.3d 1045, 1049-53 (9th Cir. 2010). Plaintiffs
5 have not shown they are likely to succeed on the merits or that they have raised serious
6 questions.

7 Federal courts are courts of limited jurisdiction. “They possess only that power
8 authorized by Constitution and statute,” *Kokkonen v. Guardian Life Insurance Co. of*
9 *America*, 511 U.S. 375, 377 (1994), and “the presumption is that [they are] without
10 jurisdiction unless the contrary affirmatively appears[.]” *Fifty Associates. v. Prudential*
11 *Insurance Co. of America*, 446 F.2d 1187, 1190 (9th Cir. 1970). The complaint asserts
12 only that that “[j]urisdiction for matters involving questions of Executive Privilege lay
13 with Federal Courts” (Doc. 1 at 1), but cites no supporting legal authority other than
14 Article III of the United States Constitution.

15 To sue in federal court, a plaintiff must have standing under Article III, that is, the
16 plaintiff “must have suffered, or be threatened with, an actual injury traceable to the
17 defendant and likely to be redressed by a favorable judicial decision.” *Lewis v. Cont’l*
18 *Bank Corp.*, 494 U.S. 472, 477 (1990). The complaint, even when construed liberally in
19 Plaintiffs’ favor, alleges no facts showing that Plaintiffs will suffer an actual, concrete
20 injury as a result of a government shutdown. Plaintiffs’ claims implicate only a
21 “generalized interest of all citizens” in efficient and effective governance. *Schlesinger v.*
22 *Reservists Comm. to Stop the War*, 418 U.S. 208, 218 (1974). Plaintiffs, therefore, have
23 failed to establish constitutional standing. See *Lujan v. Defenders of Wildlife*, 504 U.S.
24 555, 560-61 (1992) (the party invoking federal jurisdiction bears the burden of
25 establishing the three elements of constitutional standing).

26 Nor may the Court exercise jurisdiction over this suit given the principle of
27 separation of powers and the political question doctrine. “Plaintiffs’ action cannot
28

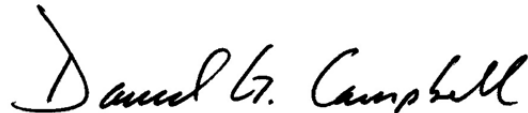
1 proceed because its resolution would require the federal judiciary to ask and answer
2 questions that are committed by the Constitution to the political branches of our
3 government.” *Corrie v. Caterpillar, Inc.*, 503 F.3d 974, 977 (9th Cir. 2007); *see*
4 *Schlesinger*, 418 U.S. at 215 (presence of a political question, like absence of standing,
5 deprives court of jurisdiction).

6 Plaintiffs note, correctly, that not even the President of the United States is above
7 the law, *see United States v. Nixon*, 418 U.S. 683 (1974), and that it is the province and
8 duty of the judicial branch to decide what the law is, *Marbury v. Madison*, 1 Cranch 137,
9 2 L. Ed. 60 (1803). But the general failure of the President and Congress to agree upon a
10 federal budget does not constitute a legal question subject to judicial review.

11 **IT IS ORDERED** that Plaintiffs’ Petition for Emergency Restraining Order
12 (Doc. 1) is **denied**.

13 Dated this 8th day of April, 2011.

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



David G. Campbell
United States District Judge